

In the United States Claims Court

No. 102-63

(FILED MAY 14, 1987)

JESSIE SHORT, ET AL., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE UNITED STATES, )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 THE HOOPA VALLEY TRIBE OF INDIANS, )  
 )  
 Defendant-Intervenor.)

THIS OPINION WILL NOT  
 BE PUBLISHED IN THE  
 U.S. CLAIMS COURT  
 REPORTER BECAUSE IT  
 DOES NOT ADD SIGNIFI-  
 CANTLY TO THE BODY  
 OF LAW AND IS NOT OF  
 WIDESPREAD INTEREST.

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William C. Wunsch, Ida O. Abbott, and Michael S. Greenberg, San Francisco, California, attorneys for the plaintiffs.

Pamela S. West, Harry H. Kelso, and Laura R. Ouverson, Washington, D.C., with whom was Assistant Attorney General F. Henry Habicht II, for the defendant.

Thomas P. Schlosser and Glenn W. Kadish, Seattle, Washington, attorneys for The Hoopa Valley Tribe of Indians.

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OPINION THREE OF FIVE

MARGOLIS, Judge.

QUALIFICATION OF PATRICIA BUSSELL SHERMAN, NO. 2727,  
 UNDER STANDARD A OR THE MANIFEST INJUSTICE EXCEPTION  
 AND QUALIFICATION OF GORDON LESTER BUSSELL, NO. 368,  
 UNDER STANDARD D OR THE MANIFEST INJUSTICE EXCEPTION

Patricia Bussell Sherman and Gordon Lester Bussell seek qualification as Indians of the Hoopa Valley Reservation (Reservation). Trial was held in San Francisco, California from March 30, 1987 through April 4, 1987 to determine plaintiffs' qualification under the standards established by the court. See Jessie Short, et al. v. United States, 719 F.2d 1133, 1143-44 (Fed. Cir. 1983), cert. denied, 467 U.S. 1256 (1984) (Short III).

The defendant United States and the defendant-intervenor Hoopa Valley Tribe oppose plaintiffs' qualification, asserting that Patricia Sherman has failed to prove lineal descent from an allottee ancestor under Standard A and Gordon Bussell does not meet the requirements of Standard D. The defendants further argue that plaintiffs' exclusion from recovery would not constitute manifest injustice. Both plaintiffs are members of the Bussell and Bussell/Dartt family groups composed of twenty-eight (28) Short plaintiffs. Common factual issues addressed in this opinion with respect to the plaintiffs presented at trial also shall apply to other plaintiff members of the Bussell and Bussell/Dartt families who have not yet qualified.

The court has considered the claims of Patricia Sherman and Gordon Bussell, and concludes that their Standard A and Standard D claims are without merit. However, both plaintiffs have adequately proven qualification under the manifest injustice exception to the A - E Standards, and therefore are Indians of the Reservation entitled to recover.

#### DISCUSSION

Patricia Sherman claims that she qualifies under Standard A based upon descent from claimed allottee ancestors, Minerva Soctish or Old Woman Jacko. Standard A requires a plaintiff to have been alive on October 1, 1949 and be an allottee or lineal descendant of an allottee of the Hoopa Valley Reservation. Short III, 719 F.2d at 1143. Patricia Sherman was living on October 1, 1949. However, she has failed to adequately prove lineal descent from either Minerva Soctish or Old Woman Jacko. There is a paucity of reliable evidence to support this claim, and what evidence does exist is undocumented and is in the form of conflicting testimony. Furthermore, the basis for these claims first arose weeks before the trial date in this litigation that has been ongoing for twenty-four years. Plaintiffs have failed to show entitlement based on these claims and have otherwise not carried the burden of proof showing descent from these claimed ancestors who were listed on the unapproved Turpin Allotment Schedule of the Square portion of the Reservation.

Patricia Sherman also claims lineal descent from Mollie Hostler who appears on the unapproved Turpin Allotment Schedule, arguing that she is an allottee ancestor under Standard A. Only persons who received allotments in fact are allottees within the meaning of Standard A, not those shown on an unapproved allotment schedule who were never actually allotted. See Jessie Short v. United States, No. 102-63, slip op. at 29, (Ct. Cl. Mar. 31, 1982), aff'd, Short III, 719 F.2d at 1133; see also, findgs. 86-88, Jessie Short v. United States, 202 Ct. Cl. 870, 931-933, 486 F.2d 561 (1973), cert. denied, 416 U.S. 961 (1974) (Short I). Therefore, Patricia Sherman may not qualify under Standard A based upon descent from persons who did not actually receive allotments.

Gordon Bussell seeks qualification under Standard D, which requires 1/4 Indian blood, and birth between October 1, 1949 and August 9, 1963 to a parent who is, or would have been when alive, a qualified Indian of the Reservation. Short III, 719 F.2d at 1144. While Gordon Bussell was born on August 22, 1953 which is within the relevant time period, and has a sufficient degree of Indian blood, neither of his parents are eligible for qualification as Indians of the Reservation under Standards A, B, or C. His mother possesses Mattole Indian blood, a non-Reservation tribe, and plaintiffs do not claim that she meets the requirements of Standards A, B, or C. Oswald Bussell, plaintiff no. 370, is plaintiff's father and although he is 1/2 Indian, he is not an allottee or a lineal descendant of an allottee eligible under Standard A, nor have plaintiffs shown by the weight of the evidence that he meets the requirements for eligibility under Standards B or C. Therefore, without an adequate showing that Gordon Bussell has a qualified parent, he may not qualify under Standard D.

Plaintiffs also argue that they qualify under the manifest injustice exception based upon their personal and ancestral connections to the Hoopa Valley Reservation. To qualify as an Indian of the Reservation under manifest injustice, a plaintiff must demonstrate:

- 1) a significant degree of Indian blood,
- 2) personal connections to the Reservation shown through a substantial period of residence thereon, and
- 3) personal ties to the land of the Reservation, and/or ties to the land through a lineal ancestor.

Weighing these three factors together will determine whether an individual plaintiff possesses the necessary contacts with the Reservation to recover.

Plaintiff Patricia Sherman argues that she possesses 1/8 Yurok or Hoopa blood and an additional 3/8 Hoopa blood, for a total of 1/2 Indian blood. The defendants agree that Patricia Sherman is 1/2 Indian, but contend that she is 3/8 Hoopa and 1/8 Wintun. Plaintiff claims her 1/8 Yurok or Hoopa blood from her great-grandmother Hettie Clark Bussell. However, the weight of the evidence indicates that Hettie Bussell's Indian blood is Wintun, not Yurok or Hoopa. The court finds that Patricia Sherman possesses 3/8 Hoopa and 1/8 Wintun Indian blood.

Patricia Sherman has lived on the Hoopa Valley Reservation for about 26 years. Although she is not an allottee or assignee and has no allottee or assignee ancestors, plaintiff herself has lived on the Reservation since 1961. Furthermore, her lineal ancestor Mollie Hostler was eligible to receive an allotment, as shown by her listing on the unapproved Turpin Allotment schedule, establishing further significant ties to Reservation land. Jessie Short v. United States, No. 102-63, Order at 4 (Cl. Ct. Jun. 6, 1986) (clarification order - Standard B). Given plaintiff's degree of Indian blood, her residence on the Reservation for 26 years, and her personal and ancestral ties to the land of the Reservation, dismissal of her claim would constitute manifest injustice.

Plaintiff Gordon Bussell claims that he possesses 1/8 Mattole blood, 3/16 Hoopa blood, and an additional 1/16 Yurok or Hoopa blood, totaling 3/8 Indian blood. The defendants do not contest plaintiff's blood degree, but argue that the Indian blood derived from his ancestor Hettie Bussell is Wintun, rather than Yurok or Hoopa. For the reasons stated above, the weight of the evidence supports the conclusion that in addition to his 1/8 Mattole and 3/16 Hoopa blood, the plaintiff is 1/16 Wintun rather than 1/16 Yurok or Hoopa. Gordon Bussell has had periods of temporary Reservation residence for two and a half years while attending college and has lived on the Reservation permanently for another seven years and three months to the time of trial. Plaintiff has no allottee or assignee lineal ancestors with ties to the land of the Reservation, but his lineal ancestor Mollie Hostler, as indicated above, was on the unapproved Turpin Allotment Schedule. Thus, in addition to his personal connections to the land through residence on the Reservation, he has substantial ancestral ties to the land shown by Mollie Hostler's eligibility for an allotment.

Gordon Bussell also claims use of Reservation resources, participation in Indian cultural activities, and knowledge of the Hoopa language and traditions to support his claim. Although these factors bespeak of plaintiff's strong ties to Indian culture and religion, the objective criteria of Indian blood degree, Reservation residence, and personal or ancestral ties to the land, are more significant in determining entitlement for the purposes of this litigation. Nonetheless, plaintiff's degree of Indian blood, period of Reservation residence, combined with his personal and ancestral ties to the land of the Reservation, do permit Gordon Bussell to qualify as an Indian of the Reservation.

#### CONCLUSION

Patricia Sherman's claim under Standard A is not supported by the evidence, since she has failed to demonstrate lineal descent from an allottee ancestor of the Hoopa Valley Reservation. Gordon Bussell's claim under Standard D is also without merit. However, plaintiffs' have established sufficient ties with the Hoopa Valley Reservation to qualify under the manifest injustice exception to the A - E Standards as Indians of the Reservation.

*Lawrence S. Margolis*  
LAWRENCE S. MARGOLIS  
Judge, U.S. Claims Court

May 14, 1987.